ELDEN L. REESE

IBLA 75-445 Decided August 11, 1975

Appeal from decision of Alaska State Office, Bureau of Land Management, holding trade and manufacturing site location notice AA-8247 unacceptable for recordation.

Trade and manufacturing site location declared invalid;
decision affirmed as modified.

1. Alaska: Trade and Manufacturing Sites

   A locator of a trade and manufacturing location initiates no rights against the United States unless he actually uses and occupies the land for trade and manufacturing purposes. A prospective business site is not within the contemplation of the trade and manufacturing site law; improvements of contiguous land in connection with the development of a prospective trade and manufacturing site create no rights in the locator.

2. Withdrawals and Reservations: Effect of

   A trade and manufacturing site location will be defeated where the law has not been substantially complied with before the land is withdrawn under statutory authority.

APPEARANCES: Robert H. Wagstaff, Esq., of Wagstaff, Rubinstein and Middleton, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

In November 1972, Elden L. Reese offered a location notice for recordation in accordance with the Trade and Manufacturing Act (T & M), 43 U.S.C. §§ 687a, 687a-1 (1970). About one and a half years later,

March 28, 1974, the tract was withdrawn by Public Land Order 5418. Thereafter basing its decision on a report of a field examination dated December 15, 1974, the Alaska State Office, Bureau of Land Management (BLM), in a decision of March 1, 1975, held the location notice "unacceptable for recordation." This appeal resulted.

Appellant, in his statement of reasons, admits he has not made any improvements or used the parcel involved. He states that he constructed a road to the tract which "has not yet reached the property but relates solely to this tract and was constructed for that purpose." He asserts that the road construction, in anticipation of establishing a business site, gives "rise to a protected property interest" which is not vitiated by the withdrawal. In substance, he asserts that the location notice should be recorded in order to protect his property rights.

[1, 2] The right to acquire a patent under the T & M Act is limited to land actually occupied and used for business purposes; a location for a prospective business site is not a qualifying use. Wilbur J. Erskine, 51 L.D. 194 (1925). Nor does the mere filing of a notice of location without substantial compliance with the law create a property interest in the land. Peter Pan Seafoods, Inc. v. Shimmel, 72 I.D. 242 (1965). In the instant case appellant initiated a claim on public land by the location of a T & M site. Admittedly, he did not use or occupy the tract; he merely attempted to hold it as a prospective business site. Thus, he did not fully comply with the law and his claim was defeated when the land was withdrawn under statutory authority. United States v. Norton, 19 F.2d 836 (5th Cir. 1927). Nor has the tract been opened to location, creation, or perfection of property rights under the public land laws since the date of withdrawal. United States v. Minnesota, 270 U.S. 181 (1926).

If the location notice were regular on its face and the land open to location at that time, it would be incumbent on BLM to accept the notice when offered on November 27, 1972, and to record it as provided by law and regulations. 43 U.S.C. § 687a-1; 43 CFR 2562.1. We discern no plausible reason for the almost two and a half year delay in processing the location notice for filing. It was error for BLM to conduct a field examination to inquire into the legality of location prior to the recordation of the location notice. After filing, inquiry into the validity of the location could be made, including a field examination, if necessary. Refusal to record, in effect, held the location to be void for reasons not disclosed by the case. Where there are disputed issues of fact the locator is entitled to due process; see 43 CFR 4.450 et seq.

As noted above, the appellant's admissions on appeal -- that no use has been made of the tract -- require a declaration of invalidity

of the trade and manufacturing site. Thus, even though the delay in recording was apparently unwarranted, no useful purpose could be served by remanding this case for correct administrative procedures. Nor can any purpose be served by returning this case for hearing. The request for hearing and/or return of the case file is denied. Since no property rights were ever created against the United States by virtue of the asserted trade and manufacturing site location, the decision below is affirmed as modified.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge